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8 Attorneys for Plaintiff,
9 **MICHAEL GARCIA**

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL GARCIA

Plaintiff,

vs.

PERFORMANT RECOVERY, INC.;
and DOES 1 to 10, inclusive,

Defendants.

Case No. CV 14-0204

SS

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

(Unlawful Debt Collection Practices)

Demand Does Not Exceed \$10,000

COMPLAINT

INTRODUCTION

1. This is an action for actual and statutory damages brought by Plaintiff, Michael Garcia, an individual consumer, against Defendant, Performant Recovery, Inc., for violations of the law, including, but not limited to, violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA"),

1 which prohibits debt collectors from engaging in abusive, deceptive, and unfair
2 practices.

3 **VENUE AND JURISDICTION**

4 2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. §
5 1337. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

6 Venue in this District is proper in that the Defendant transacts business here.

7 **PARTIES**

8
9 3. Plaintiff, Michael Garcia, is a natural person with a permanent residence in
10 South El Monte, Los Angeles County, California 91733.

11
12 4. Upon information and belief, the Defendant, Performant Recovery, Inc., is a
13 corporation engaged in the business of collecting debt in this state and in several
14 other states, with its principal place of business located at 333 North Canyons
15 Parkway, Suite 100, Livermore, Alameda County, California 94551. The principal
16 purpose of Defendant is the collection of debts in this state and several other states,
17 and Defendant regularly attempts to collect debts alleged to be due another.
18

19
20 5. Defendant is engaged in the collection of debts from consumers using the
21 mail and telephone. Defendant regularly attempts to collect consumer debts
22 alleged to be due to another. Defendant is a “debt collector” as defined by the
23 FDCPA, 15 U.S.C. § 1692a(6).
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FACTUAL ALLEGATIONS

1
2 6. The debt that Defendant is attempting to collect on is an alleged obligation
3 of a consumer to pay money arising out of a transaction in which the money,
4 property, insurance or services which are the subject of the transaction are
5 primarily for personal, family, or household purposes, whether or not such
6 obligation has been reduced to judgment.
7

8 7. In February of 2013, Defendant, in connection with the collection of the
9 alleged debt, contacted Plaintiff and threatened to garnish Plaintiff's wages.
10

11 8. Defendant has no standing to commence garnishment proceedings on behalf
12 of the creditor.

13 9. Defendant is a debt collection company and as a debt collection company
14 attempting to collection an alleged debt, Defendant can only refer the matter back
15 to the creditor with a recommendation that the original creditor attempt legal
16 proceedings which could result in garnishment.
17

18 10. The representations made to Plaintiff by Defendant regarding garnishment
19 were false.
20

21 11. The natural consequences of Defendant's statements and actions were to
22 unjustly condemn and vilify Plaintiff for his non-payment of the debt he allegedly
23 owed.
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1 12.The natural consequences of Defendant's statements and actions were to
2 produce an unpleasant and/or hostile situation between Defendant and Plaintiff.

3 13.The natural consequences of Defendant's statements and actions were to
4 cause Plaintiff mental distress.

5 14.Defendant utilized unfair and unconscionable means to collect on Plaintiff's
6 alleged debt, by lying to and misleading.
7

8 **FIRST CLAIM FOR RELIEF - FDCPA**

9 15.Plaintiff repeats and realleges and incorporates by reference to the foregoing
10 paragraphs.
11

12 16.Defendants violated the FDCPA. Defendants' violations include, but are not
13 limited to, the following:

14 (a) Defendant violated §1692d of the FDCPA by engaging in conduct
15 the natural consequences of which is to harass, oppress, or abuse
16 any person in connection with the collection of an alleged debt;
17 and
18

19 (b) Defendant violated §1692d(2) of the FDCPA by using obscene or
20 profane language or language the natural consequences of which is
21 to abuse the hear or reader in connection with the collection of an
22 alleged debt; and
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1 (c) Defendant violated §1692e of the FDCPA by using a false,
2 deceptive, or misleading representation or means in connection
3 with the collection of the alleged debt; and

4 (d) Defendant violated §1692e(4) of the FDCPA by giving the false
5 representation or implication that nonpayment of the alleged debt
6 will result in the garnishment of wages of any person when such
7 action is unlawful and the Defendant does not intend to take such
8 action; and

9 (e) Defendant violated §1692e(5) of the FDCPA by threatening to take
10 action that the Defendant does not intend to take and/or the
11 Defendant cannot legally take; and

12 (f) Defendant violated §1692e(10) of the FDCPA by using false
13 representation or deceptive means in connection with the collection
14 the alleged debt; and

15 (g) Defendant violated §1692f of the FDCPA by using unfair or
16 unconscionable means in connection with the collection of an
17 alleged debt.

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23 17. Defendant's acts as described above were done intentionally with the
24 purpose of coercing Plaintiff to pay the alleged debt.

1 18. As a result of the foregoing violations of the FDCPA, Defendant is liable to
2 the Plaintiff, Michael Garcia, for declaratory judgment that Defendant's conduct
3 violated the FDCPA, actual damages, statutory damages, and costs and attorney
4 fees.

5
6 **SECOND CLAIM FOR RELIEF - RFDCPA**

7 19. Plaintiff repeats and realleges and incorporates by reference to the foregoing
8 paragraphs.

9 20. Defendant violated the RFDCPA. Defendant's violations include, but are
10 not limited to the following:
11

12 (a) Defendant violated §1788.17 of the RFDCPA by being a debt
13 collector collecting or attempting to collect a consumer debt that is
14 not compliant with the provisions of Sections 1692b to 1692j of
15 the FDCPA, the references to federal codes in this section referring
16 to those codes as they read as of January 1, 2001.
17

18 21. Defendant's acts as described above were done intentionally with the
19 purpose of coercing Plaintiff to pay the alleged debt.
20

21 22. As a result of the foregoing violations of the RFDCPA, Defendant is liable
22 to the Plaintiff for actual damages, statutory damages, and costs and attorney fees.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant, Performant Recovery, Inc., for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA and RFDCPA.
- B. Actual damages.
- C. Statutory damages.
- D. Costs and reasonable attorney fees.
- E. Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law.
- F. For such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED,

DATED: January 3, 2014

PRICE LAW GROUP APC

By: _____



G. Thomas Martin, III
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff, Michael Garcia, demands trial by jury in this action.

I. (a) PLAINTIFFS (Check box if you are representing yourself ☐)

MICHAEL GARCIA

DEFENDANTS (Check box if you are representing yourself ☐)

PERFORMANT RECOVERY, INC.; and DOES 1 to 10, inclusive,

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

G. Thomas Martin, III (SBN 218456)
 PRICE LAW GROUP, APC, (818)907-2030
 15760 Ventura Blvd., Suite 1100, Encino, CA 91436

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
☐ 2. U.S. Government Defendant
☒ 3. Federal Question (U.S. Government Not a Party)
☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES—For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1. Original Proceeding
☐ 2. Removed from State Court
☐ 3. Remanded from Appellate Court
☐ 4. Reinstated or Reopened
☐ 5. Transferred from Another District (Specify) _____
☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)**CLASS ACTION under F.R.Cv.P. 23:** ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$ according to proof**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	PERSONAL PROPERTY	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input checked="" type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 155 Recovery of Overpayment of Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	REAL PROPERTY	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY:

Case Number: _____

CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF?	A DEFENDANT?	
	Then check the box below for the county in which the majority of DEFENDANTS reside:	Then check the box below for the county in which the majority of PLAINTIFFS reside:	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western	

Question C: Location of plaintiffs, defendants, and claims?	A Los Angeles County	B Ventura, Santa Barbara, or San Luis Obispo Counties	C Orange County	D Riverside or San Bernardino Counties	E Outside the Central District of California	F Other
Indicate the location in which a majority of plaintiffs reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	C.2. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Western

CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

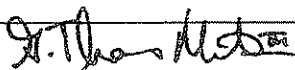
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**X. SIGNATURE OF ATTORNEY
(OR SELF-REPRESENTED LITIGANT):** _____



DATE: 1/6/2014

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))